her husband; but after non-access is otherwise proved, her testimony will *ex necessitate* be received as to the putative father. *The King and Bedel,* Lee temp. Hardwicke, 379, *R.* v. *Book,* 1 Wils. 340; *R.* v. *Luffe* (1807),8 East. 191. These cases did not hold that parents were incompetent to testify to the illegitimacy of their children, however. *R.* v. *Bramley,* 6 T. R. 330, 6 Durn. & E. 170. But in the chancery court, Lord MANSFIELD, in the case of *Goodright* v. *Moss* (1777) 2 Cowp. 591, laid it down as a rule founded in decency, morality, and policy that the parents of a child should not be permitted to say that they have had no connection, to prove illegitimacy of issue, and this decision was followed in *R.* v. *Kea* (1809) 11 East. 132, where it was held that a woman was incompetent to testify to non-access in a filiation case, and an order founded partly upon her testimony was quashed. From this decision it was an easy step to the exclusion of the testimony of both parents in such cases. *Cope* v. *Cope,* 1 Moo. & R. 269; *Wright* v. *Holdgate,* 3 C. & K. 158; *Anon.* v. *Anon., 22* Beav. 481, *23* Beav. 273. A reconsideration of the question, as a result of the statutory abolition of married persons' incompetency, (32 & 33 VICT. c. 68, 1869) caused a readoption of the old rule laid down in *The King and Reading* (*supra*), that the testimony was not incompetent, but insufficient if uncorroborated. *Rideout's Trusts* (1870) L. R. 10 Eq. 40; *Yearwood's Trusts,* L. R. 5 Ch. Div. 545 (1877). The House of Lords in 1885 in the *Aylesford Peerage case,* 11 A. C. 1, held that the declarations of the mother as to the illegitimacy of her child were admissible as evidence of her conduct, although she could not be allowed to make any such statements in the witness box. And finally, in *The Poulett Peerage* [1903] A. C. 395; *Anon.* v. *Anon.* (*supra*), was expressly overruled, the question was put upon the level of all other questions of fact, and the question of illegitimacy was made open to proof by testimony of the father and the mother, as well as that of other witnesses. In the United States, the doctrine of *The King and Reading* was early followed. *Com.* v. *Shepherd,* 6 Binn. 283; *Com.* v. *Wentz,* 1 Ashm. 269; *Parker* v. *Way,* 15 N. H. 45. Then, Lord MANSFIELD's doctrine, and the doctrine of the principal case was almost universally adopted. *Mill's Estate,* 137 Cal. 298; *Abington* v. *Duxbury,* 105 Mass. 287; *Egbert* v. *Greenwalt,* 44 Mich. 245; *Rabeke* v. *Baer,* 115 Mich. 328; *Chamberlain* v. *People,* 23 N. Y. 85; *Tioga* v. *South Creek,* 75 Pa. 433; *Mink* v. *State,* 60 Wis. 583; *Scanlon* v. *Walshe,* 81 Md. 118; WIGMORE, EVIDENCE, §§ 2063-2064. In Indiana the contrary doctrine is held, *Cuppy* v. *State,* 24 Ind. 389; *Evans* v. *State,* 165 Ind. 369, 2 L. R. A. (N. S.) 619, as it is also in *State* v. *McDowell,* 101 N. C. 734, overruling, *Boykin* v. *Boykin,* 70 N. C. 262; *State* v. *Pettaway,* 3 Hawks. 623.

WITNESSES—PHYSICIAN AND PATIENT—TESTIMONY AS TO THE RESULT OF AN AUTOPSY TAKEN WITHOUT CONSENT OF DECEASED PATIENT'S LEGAL REPRESENTATIVE.—Plaintiff sues as administrator of the estate of his deceased wife to recover for her death, resulting from injuries due to a defective highway. Upon the trial, over the objection of the plaintiff, a physician, who attended deceased before and up to the time of her death, was permitted to testify as to an autopsy upon deceased's body, which was made without plaintiff's knowledge and in disregard of his express refusal. *Held,* the testimony of the

physician was inadmissible as to any matter of which he learned as the result of the autopsy, or to his conclusion therefrom as to what was the cause of decedent's death. *Thomas* v. *Byron Tp.* (Mich. 1912) 134 N. W. 1021.

The above is a case of first impression in Michigan. The only other case to be found in which it was claimed that discoveries made by a physician during an autopsy were privileged is *Harrison* v. *Sutter St. Ry. Co.*, 116 Cal. 156. In that case, however, the physician who made the examination acted at the instance of the defendant company solely, and had not been the physician of the deceased during her lifetime. The court held that the relation of physician and patient could not arise between a physician and a dead body. In the principal case the relation of physician and patient had existed during the lifetime of the deceased, and the court simply extended the privilege, which could have been claimed with respect to all communications made during the lifetime of the deceased, to cover the discoveries made by the physician during an autopsy. Communications between physician and patient were not privileged at common law, *Duchess of Kingston's Case*, 20 How. St. Tr. 573, *Rex* v. *Gibbons*, 1 Car. & P. 97, 12 C. L. Rep. 66, *Campau* v. *North*, 39 Mich. 606, *Re Bruendl*, 102 Wis. 45; but the privilege is the result of statutes passed in over half of the States. The privilege extends to all necessary information, active and passive, gained during a professional consultation by a physician from his patient with a view to discovering and remedying the latter's ailment. *Briggs* v. *Briggs*, 20 Mich. 34, *People* v. *DeFrance*, 104 Mich. 563, *Supreme Lodge K. of P.* v. *Meyer*, 198 U. S. 508, *Battis* v. *Chicago, etc. Ry*, 124 Iowa 623, *Dubcich* v. *Rrand Lodge*, 33 Wash. 651, *Gray* v. *City of New York*, 122 N. Y. Supp. 118, 137 App. Div. 316, 2 MICH L. REV, 687-711. The privilege belongs to the patient, *Burgess* v. *Sims Drug Co.*, 114 Iowa 275, *Johnson* v. *Johnson*, 14 Wend. 637, *Boyle* v. *N. W. Mut. Relief Ass'n.* 95 Wis. 312; although it has lately been held that a physician's statements to and his prescriptions for a patient, being a part of the same transaction are privileged also. *Bryant* v. *Modern Woodmen*, 86 Neb. 372, 27 L. R. A. (N.S.) 326, *Nelson* v. *Nederland L. Ins. Co.*, 110 Iowa 600. Hospital records have also been held within the privilege. *Smart* v. *Kansas City*, 208 Mo. 162, 14 L. R. A. (N.S.) 565, *Price* v. *Standard Life etc. Co.*, 90 Minn. 264. The privilege survives after the death of the patient and may be claimed by his representative. *Beglin* v. *Met. L. Ins. Co.*, 173 N. Y. 374, *Shuman* v. *Supreme Lodge*, 110 Iowa 480.